

April 25, 2008

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-146

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In Regard to the Matter of:

Bayside State Prison                      Opinion and Report  
Litigation                                      Of the  
    Special Master

KENNY WATFORD,

-vs-

WILLIAM H. FAUVER, et al,  
Defendants.

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\*       \*       \*       \*

FRIDAY, APRIL 25, 2008

\*       \*       \*       \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

April 25, 2008

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Transcript of proceedings in the above

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matter taken by Theresa O. Mastroianni, Certified

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Court Reporter, license number 30X100085700, and

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Notary Public of the State of New Jersey at the

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United States District Court House, One Gerry Plaza,

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Camden, New Jersey, 08102, commencing at 9:30 AM.

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1 JUDGE BISSELL: We turn now to the  
2 reopening of the case 08-146 involving Kenny Watford.  
3 The following constitutes the Special Master's  
4 determination regarding the complaint of Kenny  
5 Watford.

6 This opinion/report is being issued  
7 pursuant to the directives of the Order of Reference  
8 to a Special Master and the Special Master's  
9 Agreement and the guiding principles of law which  
10 underlie this decision to be applied to the facts  
11 upon which it is based as set forth in the jury  
12 instructions in the Walker and Mejias jury charges to  
13 the extent applicable to the allegations in Mr.  
14 Watford's case.

15 As finalized after review under Local  
16 Civil Rule 52.1, the transcript of this oral opinion  
17 will constitute the written report required by  
18 paragraph seven of the Order of Reference to a  
19 Special Master.

20 Kenny Watford was an occupant of  
21 Trailer Two (as he described it, 2D West) at the time  
22 of the lockdown. He testified first to an incident  
23 involving him on or about the second of August, as  
24 best he can recall it, the date upon which Officer  
25 Baker was buried.

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1 His testimony with regard to those  
2 events appears in several segments which I will read  
3 into the record at this time from the transcript of  
4 April 9th, 2008.

5 Some of these excerpts are fairly  
6 lengthy, but I think there is some importance to  
7 engaging in this process.

8 Page 18, line 15: Did there come a  
9 time -- now, there came a time when you were  
10 assaulted, correct?

11 Answer: Yes.

12 Before I turn to that I want to direct  
13 your attention -- when was that? When were you  
14 assaulted? What was the date of the assault?

15 August the second.

16 How do you know? Are you sure of the  
17 date? How are you sure of the date upon which you  
18 were assaulted?

19 Because on this particular day there  
20 was a sergeant on the tier and I spoke to the  
21 sergeant about the way that we were being treated,  
22 you know, as far as I believe our privileges. We  
23 weren't allowed to have any contact with our families  
24 and you know we all knew that people on the outside  
25 was aware of what was going on, but, you know, we all

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1 had families out there and we needed to get in touch  
2 with our family. And I was speaking to the sergeant,  
3 I told him it wasn't right the way we were being  
4 treated because we had nothing to do with what went  
5 on with Officer Baker and Steven Beverly. Most of us  
6 didn't know Officer Baker and most of us didn't know  
7 Steven Beverly, although I did. But for the most  
8 part a lot of guys probably never even laid eyes on  
9 either one of those guys. We had absolutely nothing  
10 to do with it and --

11 I guess my question was why are you  
12 sure about the date?

13 Answer: Well, he got an attitude with  
14 me because he brought it to my attention that the day  
15 that I complained to him about our rights, their  
16 brother was being -- they were having his funeral.  
17 And that was --

18 So you're saying it was the day, at  
19 least according to your information, it was the date  
20 of the funeral? But as far as it being August 2nd,  
21 or August 3rd you're not -- are you sure about the  
22 date? You just think it's the date?

23 Answer: I can't be specific about that  
24 date, but I know it was the day that Officer Baker  
25 was laid to rest because those guys raised hell with

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1 me about saying something on that particular day.

2 Skipping some intervening discussion.

3 Resume at page 21, line one. And I myself, I believe

4 I was the only guy in the entire unit who had some

5 mobility as far as going around to different wings

6 because Officer Allen and Officer Glover appointed

7 me, I went from tier rep to trailer rep.

8 Question: What did that involve being

9 the rep? What is a rep?

10 Answer: If there are any issues that

11 the inmate population in Trailer Two had that the

12 officers couldn't handle or something that had to be

13 brought to the administration's attention, Mr. Faunce

14 or maybe the captain or lieutenant, I was the one who

15 they appointed to go speak with those persons in

16 charge.

17 Moving ahead further to page 27, line

18 11 the questioning resumes by Mr. Lindsay. Now you

19 asked the officer if you could speak to him. What

20 did he reply?

21 He said yes and we went immediately off

22 the tier.

23 And what did you say to him?

24 I told him that I needed to get in

25 touch with my family. You know there were a bunch of

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1 us here, we were being mistreated, you know, in ways  
2 that -- for reasons that we had nothing to do with.  
3 And I apologized to him for the loss of Officer Baker  
4 at the time. But I told him, you know guys who -- we  
5 have families, we need to get in touch with our  
6 families. We're not receiving mail, we're not  
7 allowed to send mail out, we're not allowed to make  
8 phone calls and the restrictions were intense and we  
9 felt like our rights were being violated. And I  
10 guess he got aggravated by what I said and so he told  
11 me to come with him and we went over to the day room  
12 area and he made a phone call on the phone over by  
13 Officer Allen's station.

14 Moving ahead a little further. Page  
15 29, line 12, question: So what happened then?

16 Answer: Several minutes later there  
17 was a little small band of guys came down and they  
18 were marching in cadence. And the guy that was  
19 bringing up the rear had a dog with him. And so the  
20 sergeant had me step out on the step with him and  
21 there was one guy who I guess was the little troop  
22 commander because there were two lines of guys, but  
23 they were only, like, four deep I would say. And he  
24 spoke to that guy and told him what I said.

25 Question: Did you hear what that



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1 officer said at the time?

2 Yes, I could.

3 Question: What did he say? What did  
4 you hear?

5 The sergeant told him that this inmate  
6 here is complaining about their privileges on the day  
7 of our comrade's funeral.

8 Question: What happened?

9 They pulled me off that step and ran my  
10 head up against the exterior wall of the trailer and  
11 started beating and kicking the shit out of me. I  
12 said maybe two-and-a-half, three minutes, but when  
13 you're going through something like that, it seems  
14 like it was a long time. Whether it was a long time  
15 or not, I felt like it was a long time. I was on my  
16 knees, I had my head rammed up against that wall and  
17 I was just getting beaten on my back, around my back  
18 area.

19 Question: How many officers were  
20 involved in this beating?

21 Well, there were six of them there, but  
22 I'm not sure all six officers hit me, but two or  
23 three officers were hitting me because the one guy  
24 held me down by my neck and my head, you know, while  
25 some of the other officers were doing what they did.

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1 Then when one of the officers said something the  
2 beatings stopped and another officer, the officer  
3 that had the dog came over there. The dog was  
4 barking the entire time and he had the dog right next  
5 to my head. And he was still -- had the pressure on  
6 my head up against that unit and the dog was barking.  
7 And he had the dog so close that the dog was  
8 salivating on the left side of my face and I had  
9 saliva in my hair. I was terrified.

10 Question: And approximately how long  
11 do you think this incident took?

12 Answer: Seemed to me to be five or six  
13 minutes.

14 Let me ask you, were you injured as a  
15 result of this assault?

16 Answer: My knees were hurling a lot.  
17 I felt some, you know, pain in my back and I had  
18 swelling on my face. I had a little swelling on my  
19 face, it was just a little puffy.

20 What about your head as a result of  
21 being pushed into the trailer?

22 I was just having some headaches at the  
23 time.

24 Question: Do you remember which part  
25 of your body actually suffered the blows?

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1 Yes, my back. And around my back and  
2 my lower ribs.

3 Did they -- you mentioned they were  
4 beating the shit out of you, but were they hitting  
5 you?

6 Answer: I got kicked in my ass and  
7 everything. I felt body -- you know, I felt punches  
8 in my ribs, I felt boots on my buttocks. I even felt  
9 a small -- I knew it was a stick that hit me because  
10 it was too small to be someone's hand, plus it was  
11 hard.

12 Did you have any sense of whether or  
13 not they were trying to hurt you?

14 Answer: They were trying to hurt me.  
15 They weren't trying to kill me. But they were trying  
16 to hurt me.

17 Did it, in fact, hurt?

18 Yes, it did. Yes, sir.

19 After the assault on you, what  
20 happened?

21 They told me to get up and assisted me  
22 in going up and then sergeant told me to get my ass  
23 back on that wing and keep my mouth shut and that's  
24 what I did.

25 Now, did you complain to anyone about

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1 this assault?

2 Answer: No, I was scared to death, no.

3 I also take note of the fact that this  
4 testimony with regard to what happened to him on that  
5 date is consistent with the contemporaneous complaint  
6 letter that he wrote to Judge Jeff S. Mason, at least  
7 he's addressed as The Honorable Jeff S. Mason in his  
8 chambers in Quaker Bridge Plaza in Trenton, New  
9 Jersey. It was introduced as P-72 in evidence. I  
10 say contemporaneous. Relatively so, written on the  
11 22nd of August, just some 20 days afterward.

12 This letter, by the way, was received  
13 by state authorities according to the stamp appearing  
14 on my copy, P-72, on August 27th.

15 He also filed an Administrative Remedy  
16 Form (and I'm not getting into an exhaustion question  
17 at this point) the Administrative Remedy Form is  
18 dated in late December of 1998, D-187 in evidence,  
19 which also recounts the events in question here  
20 consistently with his testimony here in court.

21 I find that it is reasonable and  
22 credible in connection with the explanations that  
23 appear here for his lack of complaints within the  
24 system at Bayside State Prison. This man in  
25 particular had every reason to fear retaliation.

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1                   Similarly, with regard to his decision  
2     not to give a detailed statement when interviewed by  
3     Internal Affairs at the North Jersey prison facility,  
4     he also has a valid explanation at least in terms of  
5     whether it had any adverse impact on his credibility,  
6     which it doesn't, because he was about to get out.  
7     He certainly didn't want trouble and be plunged into  
8     this event while still in custody. That could have  
9     imperiled that status, at least in his mind, and  
10    that's a very reasonable concern.

11                   There was some debate in the course of  
12    the cross-examination particularly about his knees  
13    and how could he have been really injured in his  
14    knees because he was on his knees. He doesn't say he  
15    was hit in his knees on this occasion, however, he  
16    did say he was slammed to the ground on a hard  
17    surface and that that aggravated a pre-existing knee  
18    condition which was well-documented in the matter in  
19    question.

20                   So I find that, in addition to head and  
21    back pain which was severe in the first instance and  
22    lingered thereafter, a pre-existing condition with  
23    regard to his knees was aggravated, and that also led  
24    to the persistence of that injury.

25                   I find it also rather interesting that

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1 this beating was inflicted on the exterior of the  
2 trailer. That had certain advantages for those who  
3 inflicted it. First, it was not within the confines  
4 of the trailer itself either in one of the wings or  
5 in the day room where it could much more easily be  
6 observed and heard presumably by the other inmate  
7 occupants. Secondly, and I must admit I've not  
8 confirmed by looking at the log book at this time,  
9 but from the evidence we've been receiving here, if  
10 they had entered into the trailer unit, presumably an  
11 entry would have had to have been made in the log  
12 book for that arrival. One would assume, at least,  
13 that with activities on the outside of the trailer,  
14 such an entry would not be necessary.

15 As I said, I haven't reviewed the log  
16 book specifically. If, in fact, there is an entry  
17 for SOGs in and out that day, at that time, then so  
18 be it. I don't think it diminishes, if you will, my  
19 findings as to the actual facts that occurred on the  
20 outside of the trailer. But if, in fact, there was  
21 no log entry for SOG arrival at that particular  
22 occasion, then I think that's further support of the  
23 calculated nature of this event by, among other

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1 things, having it take place outside the confines of  
2 the trailer unit.

3 The action of assaulting and beating  
4 Mr. Watford in the manner in which he described, and  
5 which I have determined occurred, goes well beyond  
6 the necessity of any proper law enforcement needs or  
7 any proper exercise of discipline or other legitimate  
8 penalogical purpose, as well defined in the jury  
9 instructions which are incorporated here.

10 There was, indeed, excessive,  
11 unnecessary and sadistic force imposed upon Mr.  
12 Watford within the contemplations of those legal  
13 principles. I also find that this is a case where  
14 punitive damages should be imposed. There was  
15 absolutely no reason to call the SOGs in or to have  
16 them in that vicinity on this occasion. They were  
17 not there for the purpose of transporting inmates,  
18 they were not there for the purpose of assisting in a  
19 search, they were not there to respond to any  
20 legitimate concern about prison discipline or  
21 possible disturbances in the unit. They were called  
22 there specifically to inflict punishment upon Mr.  
23 Watford who in the eyes first of the sergeant and  
24 then the SOGs had the audacity to do his job on the  
25 same day that Mr. Baker was being laid to rest. His

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1 job as the trailer rep was to bring concerns of those  
2 within that unit to appropriate authorities, and in  
3 this case he approached the housing sergeant who  
4 happened to be on the premises. Certainly a very  
5 appropriate first step in that regard.

6               Secondly, and I find by way of  
7 appropriate inference, this was the right man to beat  
8 at the right time. We were early in the lockdown  
9 period, this was an inmate rep, let's let him know  
10 who's in charge here (a little bit of the so-called  
11 cut off the head mentality) and thereby you're in a  
12 position to diminish his effectiveness as an advocate  
13 for the others in his facility and through him, of  
14 course, deliver a message back to others that even  
15 those in a position of some prestige within the  
16 inmate population are vulnerable and will be dealt  
17 with.

18               I just want to make one other quick  
19 comment. Plaintiff talked about a second assault on  
20 him by being hit twice for moving his head to look at  
21 Mr. Hussie during his removal from the unit for a  
22 search of the unit at a later date. I find that this  
23 event, taken by itself, would be an appropriate  
24 response to disobeying an order not to look, a  
25 legitimate order in that sense. Nor do I find,



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1 considered either individually, cumulatively, that it  
2 adds to the magnitude of his injuries.

3 To make it perfectly clear, the  
4 decision in Mr. Watford's favor here is measured upon  
5 the events of his beating on the day of Mr. Baker's  
6 funeral and not the events on his removal from his  
7 unit for purposes of the search.

8 As you know, I have incorporated here  
9 by reference all of the terms of the jury  
10 instructions in the Walker and Mejias cases. And  
11 particularly in the Walker charge, I've examined it,  
12 there is a comprehensive description of legal  
13 principles with regard to the imposition of punitive  
14 damages which I incorporate by reference specifically  
15 here.

16 I might note merely in summary that  
17 punitive damages are to be awarded if the actions in  
18 question are motivated by an evil motive or intent or  
19 reckless or callus indifference to the plaintiff's  
20 rights to be free from cruel and unusual punishment.  
21 Whether considered under either of those tests or any  
22 others in the jury instructions, that's exactly what  
23 occurred and what was visited upon Kenny Watford in  
24 this case.

25 Finally, although not every item of

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1 evidence has been discussed in this opinion/report,  
2 all evidence presented to the Special Master was  
3 discussed and considered.

4 I find that the injury inflicted here  
5 is actionable. I find that the injuries were acute  
6 initially and remained permanent in the manner  
7 previously described. Accordingly, I recommend in  
8 this report that the district court enter an award of  
9 compensatory damages in the amount of eight thousand  
10 dollars in favor of Kenny Watford.

11 In addition, based upon my prior  
12 recitation concerning the severity of these acts,  
13 their totally improper and inappropriate motivation  
14 and as reflected in legal standards applicable to  
15 punitive damages, I similarly recommend in this  
16 report that the district court enter an award of  
17 punitive damages in the amount of 20 thousand  
18 dollars.

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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and  
Certified Shorthand Reporter of the State of New  
Jersey, do hereby certify that the foregoing is a  
true and accurate transcript of the testimony as  
taken stenographically by and before me at the time,  
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any  
of the parties to this action, and that I am neither  
a relative nor employee of such attorney or counsel,  
and that I am not financially interested in the  
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: April 29, 2008

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